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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Applicants : Michael Wayne Graham and Robert Norman Rice

Serial No. : 10/759,841

Examiner : Whiteman, Brian A.

Filed : January 15, 2004

Art Unit : 1635

Conf. No. : 8757

For : SYNTHETIC GENES AND GENETIC CONSTRUCTS

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30 Rockefeller Plaza  
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November 9, 2010

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

**COMMUNICATION PURSUANT TO 37 C.F.R. §1.28(c)**

Applicants submit this Communication Pursuant to 37 C.F.R. §1.28(c) to correct an error in establishing small entity status in connection with the above-identified application.

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**Remarks**

Applicants' previous attorney claimed small entity status at the time of filing of the subject application and paid the following fees at the small entity rate: (i) the basic filing fee, (ii) the fee for an independent claim in excess of three, and (iii) the fee for twenty-nine (29) claims in excess of twenty (20). Applicants paid all subsequent fees at the non-small entity rate.

37 C.F.R. §1.28(c) provides that a mistake in establishing small entity status will be excused if the requirements of the section are complied with. Specifically, 37 C.F.R. §1.28(c) states as follows:

If status as a small entity is established in good faith, and fees as a small entity are paid in good faith, in any application or patent, and it is later discovered that such status as a small entity was established in error, or that through error the Office was not notified of a loss of entitlement to small entity status as required by § 1.27(g)(2), the error will be excused upon: compliance with the separate submission and itemization requirements of paragraphs (c)(1) and (c)(2) of this section, and the deficiency payment requirement of paragraph (c)(2) of this section.

Small entity status was established in good faith at the time of filing on behalf of Applicants, and fees at the small entity rate were paid in good faith on behalf of Applicants. Applicants later discovered that small entity status was established in error. Accordingly, Applicants respectfully request that the error in claiming small entity status be excused pursuant to 37 C.F.R. §1.28(c).

**Separate submission requirement of 37 C.F.R. §1.28(c)(1)**

37 C.F.R. §1.28(c)(1) provides that any paper submitted under 37 C.F.R. §1.28(c) must be limited to the deficiency payment (all

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fees paid in error), required by paragraph (c)(2) of 37 C.F.R. §1.28(c), for one application or one patent.

This Communication is being submitted solely in connection with U.S. Serial No. 10/759,841, in compliance with 37 C.F.R. §1.28(c)(1).

**Itemization requirements of 37 C.F.R. §1.28(c)(2)**

37 C.F.R. §1.28(c)(2) provides that the deficiency owed, resulting from the payment of small entity fees, is the difference between the current fee amount and the amount of the erroneous small entity fee payment. Where a fee paid in error as a small entity was subject to a fee decrease between the time the fee was paid in error and the time the deficiency is paid in full, the deficiency owed is equal to the amount (previously) paid in error. 37 C.F.R. §1.28(c)(2) further provides that the total deficiency payment owed is the sum of the individual deficiency owed amounts for each fee amount previously erroneously paid as a small entity.

In addition, 37 C.F.R. §1.28(c)(2) requires an itemization of the total deficiency payment. The itemization must include the following information:

- (A) Each particular type of fee that was erroneously paid as a small entity, along with the current fee amount for a non-small entity;
- (B) The small entity fee actually paid, and when;
- (C) The deficiency owed amount (for each fee erroneously paid); and
- (D) The total deficiency payment owed, which is the sum or total of the individual deficiency owed amounts.

Applicants set forth the following itemization of deficiency payment owed pursuant to 37 C.F.R. §1.28(c)(2):

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Fee type	Current non-small entity rate	Amount of erroneous payment at small entity rate	Date of payment	Deficiency owed amount
Filing Fees	Basic Filing Fee of \$330.00, Search Fee of \$540.00, and Examination Fee of \$220.00, for a total fee of \$1,090.00	\$385.00	January 15, 2004	\$705.00
Claims in Excess of Twenty (20)	\$52.00 per claim x 29 claims = \$1,508.00	\$9.00 per claim x 29 claims = \$261.00	January 15, 2004	\$1,247.00
Independent Claims in Excess of Three (3)	\$220.00 per claim x 1 claim = \$220.00	\$43.00 per claim x 1 claim = \$43.00	January 15, 2004	\$177.00
<b>Total Deficiency Payment Owed: \$2,129.00</b>				

Applicants enclose a check for the amount of the total deficiency payment owed, i.e. \$2,129.00.

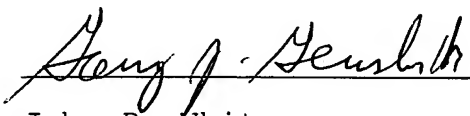
Applicants maintain that the requirements of 37 C.F.R. §1.28(c) have been met by the submission of this Communication and payment of the total deficiency payment owed, and hereby request that the error in claiming small entity status be excused.

If a telephone interview would be of assistance in advancing prosecution of the subject application, Applicants' undersigned attorney invites the Examiner to telephone him at the number provided below.

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No fee, other than the total deficiency payment owed of \$2,129.00, is deemed necessary in connection with the filing of this Communication. However, if any additional fee is required, authorization is hereby given to charge the amount of any such fee to Deposit Account No. 03-3125.

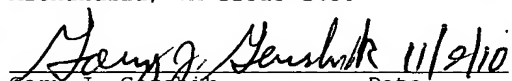
Respectfully submitted,



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I hereby certify that this correspondence is being deposited this date with the U.S. Postal Service with sufficient postage as first class mail in an envelope addressed to:

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Gary J. Gershik Date 11/9/10  
Reg. No. 39,992